IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2917 OF 1993

Shree Shiv Chhatrapati Education Society & Anr... . ... Petitioners

V/s

Naarendra Kashinath Choudhari & Anr.... ..... Respondents.

Mr.Rajesh Datar, Adv. for the petitioners.

Mr.S.M.Kamble, Adv. For respondent No.2.

CORAM: A.P. DESHPANDE, J.
2.4.2007

ORAL JUDGMENT:

The petitioner-Education Society takes exception to the impugned order passed in appeal by Presiding Officer, School Tribunal, which in turn allows the appeal filed by respondent No.1 and directs his reinstatement in service with continuity and back wages.

2. It is the case of the petitioner that respondent No.1 came to be appointed temporarily as an assistant teacher in school administered by the petitioner under initial appointment order with effect from 14.6.1985. Thereafter respondent No.1 was terminated from service at the end of

academic sessions and came to be issued an order of reappointment yet again for next academic session. According to the petitioner for two fold reasons the appointment of respondent No.1 had to be temporary and the said two reasons are ; (i) that the vacancy wherein the respondent No.1 was appointed was earmarked for reserved category for schedule caste and (ii) that the respondent No.1 was untrained teacher and was only possessing qualification of B.Sc. According to the petitioner respondent No.1 stood terminated by efflux of time at the end of academic sessions 1989-90 whereas the respondent No.1 contended before the Tribunal in appeal that he was also appointed in academic sessions 1990-91 and was orally terminated with effect from 3.9.1990. It is evident from the judgment of the Appellate Tribunal that when the matter was decided by the Tribunal respondent No.1 had not by then acquired training/teaching qualification of B.Ed. But had registered himself for a correspondence course with Annamalai University for B.Ed. The Tribunal has allowed the appeal by holding that though the respondent No.1 was untrained, he had right to continue until replaced by a trained teacher. In the present case after termination of respondent No.1 one Mr.Jadhav who is impleaded as respondent No.2 in this petition came to be appointed on 18.8.1990. Shri Jadhav respondent No.2 herein belonged to schedule caste category of backward class and thus was appointed on directions from the Social Welfare Officer which are contained in a communication dated 16.8.1990. With a view to remove the back log respondent No.2-Jadhav was appointed from 18.8.1990 and he had acquired training qualification in June, 1992. A certificate to that effect is filed on

record by the petitioner at page 29. It is thus clear that when the Tribunal decided the appeal respondent No.2-Jadhav had already acquired the qualification and he continues to be in service of the petitioner since the year 1990 till date for the reason that the judgment and order passed by the Tribunal was stayed by this Court by granting interim relief while issuing rule in the matter.

3. Learned counsel for the petitioner has invited my attention to ground No.(f) of the petition where it is stated that the order passed by the Tribunal granting back wages was also unsustainable as the respondent No.1 during pendency of the appeal secured employment with a company known as Bombay Drug situated at the address mentioned therein and has been drawing salary of Rs.1450/-. It is then stated that respondent No.1 has withdrawn his provident fund and hence contended that respondent No.1 is not interested in reemployment. The said statement is made on affidavit which goes without rebuttal in the absence of any affidavit in reply from respondent No.1. It thus appears that respondent No.1 is not interested in opposing this writ petition as no one is representing respondent No.1 despite service.

4. In the above fact situation the only question that arises for consideration is as to whether can an untrained teacher claim right to the post on the basis of temporary appointment order appointing him for a period of one academic session. For making a substantive appointment so also temporary appointment the candidate need to possess eligibility qualification as are laid down under Schedule B. Even while filling temporary vacancy the

management is obliged to appoint a person duly qualified to fill in such vacancy. Sub-section 5 of section 5 obliges the management to appoint a person who is duly qualified. Similar is the position that emerges from Rule 6 of the M.E.P.S. Rules which lays down that minimum qualification as prescribed in schedule B need to be possessed by teaching and non-teaching staff. Thus it is the statutory requirement that teacher need to possess training qualification and in the absence of which such a candidate cannot claim any right to the post. The respondent No.1 has failed to acquire training qualification though he was in service for about five years. Even during pendency of the appeal before the Tribunal it has come on record that respondent No.1 had not acquired training qualification. It is not clear as to whether till date has the respondent No.1 acquired training qualification or otherwise as no affidavit in reply has been filed in this Court. It thus appears from the record that respondent No.1 stood terminated at the end of academic session 1989-90 under terms of order of appointment. As I am of the view that an untrained teacher does not have any right to the post no fault can be found in termination of such an employee. Respondent No.1 also seems to have secured gainful employment long back. It is evident from the petition which is sworn on 16.7.1993 and the averments therein have not been denied. Hence I proceed to accept the averments made in the petition as true and correct. In view of the discussion made herein above and more so having regard to the fact that the judgment of the School Tribunal has been stayed all throughout, coupled with the fact that one Mr.Jadhav-respondent No.2 herein who was appointed on 18.8.1990 has trained himself in the year

1992 and is in the employment of the petitioner since then till date I deem it fit to allow the writ petition. In the result writ petition is allowed. The impugned judgment and order dated 30.4.1996 passed by the School Tribunal is quashed and set aside. Rule is made absolute with no order as to costs.